

U.S. DISTRICT COURT  
N. D. CALIF.  
SACRAMENTO

CLERK OF COURT

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CIVIL ACTION NO. 4:14-CV-00825-A

**Defendants.**

## Joint Status Report – Page 1

- B. Defendants' Contentions:** Defendants deny that they breached their fiduciary duties to Plaintiff. Defendants Pennant and Salem also contend that Plaintiff's Texas common law claims are preempted by ERISA, and Defendant Pennant contends that Plaintiff does not have a claim under the Investment Advisers Act of 1940 because that act does not provide for a private right of action based on the facts alleged in this case.

**II. Any challenge to jurisdiction or venue:**

None.

**III. Any pending motions:**

None.

**IV. Any matters which require a conference with the court:**

None.

**V. Likelihood other parties will be joined, identity of potential parties and an estimate of the time needed for joinder:**

- A. Plaintiff's Contentions:** Plaintiff currently anticipates joining at least the auditor of the short term investment fund through which Plaintiff suffered the losses. Plaintiff plans to conduct discovery seeking to identify the potential responsibility of other individuals, representatives, and entities for the losses sustained. Plaintiff estimates that since discovery will be necessary prior to making joinder determinations, it will need 150 days to join that additional party(ies).

- B. Defendants' Contentions:** Defendants do not anticipate joining additional parties.

**VI. Requested trial date, estimate of length of trial and whether jury has been demanded:**

The parties request a trial setting of March 1, 2016 and estimate that trial will last five to seven trial days. Plaintiff demanded a jury trial. Defendants contend that due to ERISA preemption this action must be tried to the Court without a jury.

**VII. Report Concerning Settlement Conference:**

On December 23, 2014 the parties conducted a face-to-face settlement conference, and the following individuals attended in person, not by telephone or other remote means, and the respective representatives of the parties with the unlimited settlement authority required by the Court's order:

Bill Davidoff – lead counsel for Plaintiff.

Todd Eblen – Chief Financial Officer, American Excelsior Company and representative of the Plaintiff.

Mark Bernstein – lead counsel for Defendants.

Lars Berg – local counsel for Defendants.

Walter Yurkanin – Chief Legal Officer, USF Affiliate Services, Inc., for all Defendants.

Meaningful progress toward settlement was made, and the parties intend to continue with those discussions.

**VIII. Discovery Plan Under Rule 26(f)(3):**

**A. Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1)**

Initial disclosures required by Rule 26(a)(1) will be made on January 13, 2015.

**B. Subjects on which discovery will be needed**

**Plaintiff:** Defendants' alleged due diligence or lack or inadequacy thereof concerning investments made by and into what was to be the essentially risk free Salem short term investment fund. Defendants' discovery and notice of the existence of unresolved irregularities in the investments within the Salem short term investment fund and Defendants' failure to disclose those unresolved investment fund irregularities within the Salem short term investment fund to the Plaintiff before any alleged investment by Plaintiff's trust fund and plan. Defendants' failure to consider alternative investments for the Plaintiff's trust fund and plan. Defendants' failure to diversify the Plaintiff's trust fund and plan into multiple investment vehicles. Defendants' failure to delay the alleged investment of the Plaintiff's trust fund and plan until the Salem short term investment fund irregularities were clarified or resolved. The actions or inactions of the Defendants' auditors, including but not limited to the auditors of Salem and the Salem short term investment fund. Plaintiff's relationship with each of the Defendants. Plaintiff's communications with each of the Defendants. Defendants' communications with each other and with other persons and entities concerning Plaintiff and the Salem short term investment fund, including but not limited to communications with or about the various auditors of Salem and the Salem short term investment fund, First Farmers Financial, LLC ("FFF"), Nikesh Ajay Patel ("Patel"), Timothy Glenn Fisher ("Fisher") and their associated entities, the USDA who purportedly guaranteed the fraudulent loans invested in by Salem and the Salem short term interest fund, the persons or entities who introduced Defendants to Patel and his

associated persons and entities, and other potential parties. The full extent of the losses and plan distribution delays caused by the Defendants' actions. The Defendants' accounting for and charging of attorneys' fees and expenses incurred in seeking to collect assets and funds for the Salem short term investment fund from FFF, Patel, Fisher and their associated entities, as well as the USDA.

**Defendants:** Plaintiff's decision to invest in the short term investment fund and the process it followed. The cause of the losses in the short term investment fund. Plaintiff's losses and damages. Plaintiff's relationship with each Defendant. Plaintiff's communications with each Defendant. Plaintiff's plans to distribute funds to plan beneficiaries.

**C. Issues Relating to Electronically Stored Information**

No issues. The parties intend to agree as to the form in which ESI will be produced.

**D. Issues Relating to Claims of Privilege or of Protection as Trial-Preparation Material**

The parties intend to enter an appropriate confidentiality agreement that covers their own confidential information and that of third parties.

**E. Changes or Limitations on Discovery**

None.

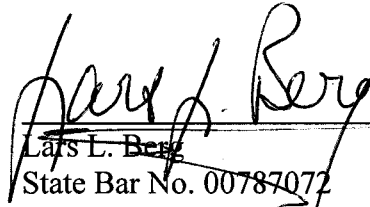
**F. Other Orders**

None.

**IX. Any other matters relevant to the status and disposition of the case:**

None.

Respectfully submitted,



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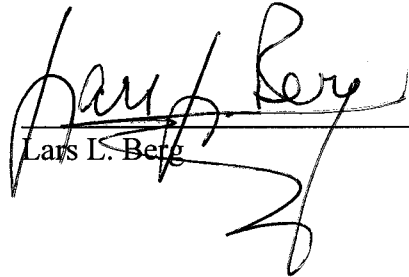
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**CERTIFICATE OF SERVICE**

I, Lars L. Berg, certify that service of the foregoing *Joint Status Report* has been made  
on January 7, 2015, by sending copies by email to:

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